

Defendant.

**ANSWER**

**PRELIMINARY STATEMENT**<sup>1</sup>

102722776

4. Defendant denies the allegations in paragraph 4 of the Complaint.

### **PARTIES**

5. Defendant denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and therefore denies same.

6. Defendant admits that Defendant's principal office is in New York, New York, and otherwise denies the allegations in paragraph 6 of the Complaint.

### **JURISDICTION AND VENUE**

7. Defendant admits that Plaintiff purports to establish jurisdiction as stated in paragraph 7 of the Complaint and otherwise denies the allegations in said paragraph.

8. Defendant admits that Plaintiff purports to lay venue as stated in paragraph 8 of the Complaint and otherwise denies the allegations in said paragraph.

### **TCPA BACKGROUND**

9. Defendant states that the allegations concerning the TCPA and its legislative history are legal conclusions to which no response is required and refers to the TCPA and its legislative history for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 9 of the Complaint.

10. Defendant states that the allegations concerning the TCPA and its legislative history are legal conclusions to which no response is required and refers to the TCPA and its legislative history for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 10 of the Complaint.

11. Defendant states that the allegations concerning the TCPA and the regulations promulgated under the Act are legal conclusions to which no response is required and refers to

the TCPA for its contents; to the extent a response is required, Defendant denies the allegations in paragraph 11 of the Complaint.

12. Defendant states that the allegations concerning the TCPA and the regulations promulgated under the Act are legal conclusions to which no response is required and refers to the TCPA and its related regulations for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 12 of the Complaint.

13. Defendant states that the allegations concerning the TCPA and the regulations promulgated under the Act are legal conclusions to which no response is required and refers to the TCPA and its related regulations for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 13 of the Complaint.

14. Defendant states that the allegations concerning the National Do Not Call Registry and its related regulations are legal conclusions to which no response is required and refers to the legislation and regulations related to the National Do Not Call Registry for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 14 of the Complaint.

### **FACTUAL ALLEGATIONS**

15. Defendant admits that it purchases future receivables from select businesses. Except as expressly admitted, Defendant denies the allegations in paragraph 15 of the Complaint.

16. Defendant admits that at times it has used telephone marketing techniques to attempt to generate business. Except as expressly admitted, Defendant denies the allegations in paragraph 16 of the Complaint.

17. Defendant alleges that it did not place any call to Plaintiff's cellular telephone. Defendant lacks knowledge and information as to whether a third party placed a call and claimed

to be acting for Defendant or some other company, and on that basis, denies the allegations in paragraph 17 of the Complaint.

18. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 18 of the Complaint and therefore denies same.

19. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 19 of the Complaint and therefore denies same.

20. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 20 of the Complaint and therefore denies same.

21. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 21 of the Complaint and therefore denies same.

22. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 22 of the Complaint and therefore denies same.

23. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 23 of the Complaint and therefore denies same.

24. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 24 of the Complaint and therefore denies same.

#### **CLASS ACTION ALLEGATIONS**

25. Defendant admits that Plaintiff purports to bring this action as a class action in accordance with Rule 23 of the Federal Rules of Civil Procedure and otherwise denies the allegations in paragraph 25 of the Complaint.

26. Defendant admits that Plaintiff purports to bring this action on behalf of the class and subclasses as defined in paragraph 26 of the Complaint and otherwise denies the allegations

in paragraph 26 of the Complaint. Defendant specifically denies Plaintiff has defined a valid, ascertainable class.

27. Defendant admits that Plaintiff purports to exclude certain individuals and entities from the class as stated in paragraph 27 of the Complaint and otherwise denies the allegations in paragraph 27 of the Complaint.

28. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 28 of the Complaint and therefore denies same.

29. Defendant lacks sufficient knowledge and information as to the number of persons who might be part of the purported class defined by Plaintiff, and on that basis, denies that allegation. Defendant denies all the allegations in paragraph 29 of the Complaint.

30. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 30 of the Complaint and therefore denies same.

31. Defendant denies the allegations in paragraph 31 of the Complaint, including its subparts.

32. Defendant denies the allegations in paragraph 32 of the Complaint.

33. Defendant denies the allegations in paragraph 33 of the Complaint.

34. Defendant denies the allegations in paragraph 34 of the Complaint.

35. Defendant denies the allegations in paragraph 35 of the Complaint.

36. Defendant denies the allegations in paragraph 36 of the Complaint.

37. Defendant lacks sufficient knowledge or information to admit or deny the allegations in paragraph 37 of the Complaint and therefore denies same.

**LEGAL CLAIMS**

**Count One:**

**Violation of the TCPA, 47 U.S.C. § 227(b) and 47 C.F.R. § 64.1200(a)**

38. Defendant repeats and re-alleges each response contained in the preceding paragraphs of the Answer as if set forth herein.

39. Defendant denies the allegations in paragraph 39 of the Complaint.

40. Defendant denies the allegations in paragraph 40 of the Complaint.

**Count Two:**

**Injunctive Relief**

41. Defendant repeats and re-alleges each response contained in the preceding paragraphs of the Answer as if set forth herein.

42. Defendant states that the allegations concerning the TCPA and the regulations promulgated under the Act are legal conclusions to which no response is required and refers to the TCPA and its related regulations for their contents; to the extent a response is required, Defendant denies the allegations in paragraph 42 of the Complaint.

43. Defendant admits that the Plaintiff purports to seek relief as stated in paragraph 43 of the Complaint and otherwise denies the allegations in paragraph 43 of the Complaint.

**RELIEF SOUGHT**

44. Defendant denies the allegations in Plaintiff's request for relief (*i.e.*, paragraphs numbered 1 through 5 on pages 7 to 8 of the Complaint), and specifically denies that the Defendant is liable to Plaintiff in any amount or manner whatsoever and further denies that the Plaintiff is entitled to any relief in this action.

**GENERAL DENIAL**

45. Defendant denies each and every allegation in the Complaint that is not expressly admitted above.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

46. The Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

47. Plaintiff lacks standing to assert claims for relief purportedly alleged in the Complaint.

**THIRD AFFIRMATIVE DEFENSE**

48. Plaintiff, and those Plaintiff purports to represent, seek an award of statutory damages under 47 U.S.C. § 227 that would violate the due process rights afforded Defendant under the United States Constitution.

**FOURTH AFFIRMATIVE DEFENSE**

49. Defendant alleges that its actions, conduct and dealings were lawful as authorized by applicable state and federal statutes, rules and regulations, and such actions and conduct were carried out in good faith for legitimate purposes.

**FIFTH AFFIRMATIVE DEFENSE**

50. Defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under the TCPA.

**ADDITIONAL AFFIRMATIVE DEFENSES**

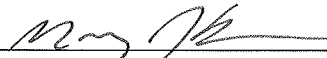
51. Defendant reserves the right to assert any additional affirmative defenses that become available or apparent during the pendency of this matter.

**WHEREFORE**, Yellowstone demands judgment dismissing Plaintiff's Complaint in its entirety and ordering Plaintiff to compensate Yellowstone for its costs, disbursements,

reasonable attorneys' fees and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
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